

**Updating Public Disclosure Commission  
Enforcement Hearing (Adjudicative Proceeding) Rules**

**Chapter 390-37 WAC**

**May 20, 2003**

**Proposed New Rule**

**\*PROPOSED NEW RULE:**

**WAC 390-37-001 Enforcement Cases – Jurisdiction.** The commission enforces the sections of RCW 42.17 concerning campaign financing, lobbyist reporting, reporting of public officials' financial affairs, reporting by public treasurers, political advertising, and campaign contribution limitations. The commission does not enforce the public records provisions of RCW 42.17 because RCW 42.17.340 provides for direct review by the superior courts.

**CITES:**

RCW 42.17.370(1), RCW 42.17.395, RCW 42.17.340

**COMMENTS:**

This proposed new rule confirms the PDC's long-standing interpretation and practice. This proposed new rule clarifies the relationship between the PDC's jurisdiction in chapter 42.17 RCW over the sections it enforces, and the superior court's jurisdiction over public records disputes in the public records sections of chapter 42.17 RCW.

**\*CURRENT RULE:**

**WAC 390-37-010 Enforcement procedures -- Policy.** The commission recognizes the need for published uniform rules setting forth commission policies and procedures for cases in which violations or apparent violations of chapter 42.17 RCW are brought to its attention. The policy of the commission shall be to facilitate the resolution of compliance matters in a fair and expeditious manner.

[Order 79, § 390-37-010, filed 6/25/76.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-010 Enforcement procedures -- Policy. General.** ~~The commission recognizes the need for published uniform rules setting forth commission policies and procedures for cases in which violations or apparent violations of chapter 42.17 RCW are brought to its attention. This chapter provides the procedures for adjudicative proceedings (hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17.395, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedures are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency pursuant to RCW 42.17.360(5) and RCW 42.17.395(3).~~

In addition, the procedures for requesting a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17.370(1), chapter 390-24 WAC, and chapter 390-28 WAC.

The policy of the commission shall be to facilitate the resolution of compliance matters in a fair and expeditious manner. The commission encourages the parties to consider alternative resolution or partial resolution procedures such as stipulations under WAC 390-37-090, when appropriate. Informal settlements are encouraged by RCW 34.05.060.

**CITES:**

RCW 42.17.370(1), RCW 42.17.360, RCW 42.17.395, RCW 34.05.413, RCW 34.05.060, chapter 10-08 WAC

**COMMENTS:**

This rule was promulgated in 1976. The proposed amendments modernize the rule, and provide cross-references to other relevant rules to better assist persons in understanding the PDC's enforcement procedures. The amendments explain that where chapter 390-37 WAC's rules differ from the model rules in chapter 10-08 WAC, chapter 390-37 WAC controls. This is because the agency finds that its adjudicative proceedings rules are better tailored in several respects to the type and volume of cases before the PDC, and to the procedures necessary for a multimember board that meets approximately monthly. The amendments also reference the informal settlements language in the Administrative Procedure Act at RCW 34.05.060.

<b>WAC 390-37-020</b>
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**\*CURRENT RULE:**

**WAC 390-37-020 Enforcement procedures -- Initiation of complaint.** (1) A complaint alleging a violation of chapter 42.17 RCW may be brought to the attention of the commission staff by:

- (a) A member of the public;
  - (b) The commission staff;
  - (c) A commission member, who shall then be disqualified from participating in the decision of an enforcement hearing that may arise from the complaint;
  - (d) Referral from the office of the attorney general or any other law enforcement agency;
  - (e) A state agency, local agency or member of a state or local agency.
- (2) The person or entity against whom a complaint is filed shall be known as the respondent.

[Statutory Authority: RCW 42.17.370. 93-24-003, § 390-37-020, filed 11/18/93, effective 12/19/93. Statutory Authority: RCW 42.17.370(1). 84-12-017 (Order 84-03), § 390-37-020, filed 5/25/84; Order 79, § 390-37-020, filed 6/25/76.]

**SUGGESTED AMENDMENTS:**

None.

**CITES:**

RCW 42.17.370; RCW 34.05

**COMMENTS:**

No amendments are proposed for this rule.

**\*CURRENT RULE:**

**WAC 390-37-030 Enforcement procedures -- Status of citizen complainant and others.** (1)

When a citizen complaint has been filed with the agency, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission. However, the staff shall give notice to the complainant of any open commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding.

(3) A person not satisfied with the dismissal of a complaint by the commission or its executive director when no violation is found, may pursue an appropriate remedy under RCW 42.17.400(4).

[Statutory Authority: RCW 42.17.370. 02-23-001, § 390-37-030, filed 11/6/02, effective 12/7/02. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-030, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-030, filed 5/25/84; Order 79, § 390-37-030, filed 6/25/76.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-030 Enforcement procedures -- ~~Status of citizen complainant and others~~ citizen complaints filed with the commission** . (1)

When a citizen complaint has been filed with the agency pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission. However, the staff shall give notice to the complainant of any open commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding.

(3) ~~A person not satisfied with the dismissal of a complaint by the commission or its executive director when no violation is found, may pursue an appropriate remedy under RCW 42.17.400(4).~~

**CITES:**

RCW 42.17.370(1); RCW 42.17.400(4); *State ex rel. EFF v. WEA*; *Crisman v. Pierce County Fire Protection District*.

**COMMENTS:**

The proposed amendments clarify that this rule addresses complaints filed with the PDC. The amendments address the developments in the case law as a result of recent court cases and practices regarding allegations submitted to the Attorney General's Office or prosecuting attorneys under RCW 42.17.400(4). Once the state takes any form of an action, the procedures in RCW 42.17.400(4) are no longer available for citizen complaints.

**\*CURRENT RULE:**

**WAC 390-37-040 Enforcement procedures -- Procedures for filing citizen complaints.** (1) A complaint filed with the commission, relating to an elected official or a candidate for elective office, shall be in writing and signed by the complainant under oath.

(2) A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, may be made informally.

(3) A complaint filed under the provisions of either subsection (1) or (2) of this section should include:

(a) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible; and

(b) All available documentation and other evidence which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.17 RCW has occurred.

[Statutory Authority: RCW 42.17.370(1). 84-12-017 (Order 84-03), § 390-37-040, filed 5/25/84; Order 79, § 390-37-040, filed 6/25/76.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-040 Enforcement procedures -- Procedures for filing ~~citizen~~ complaints with the commission.** (1) A complaint filed with the commission, relating to an elected official or a candidate for elective office, shall be in writing and signed by the complainant under oath.

(2) A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, shall ~~may~~ be made ~~informally~~ in writing.

(3) A complaint filed under the provisions of either subsection (1) or (2) of this section shall ~~should~~ include:

(a) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible; ~~and~~

(b) All available documentation and other evidence which the complainant is able to supply to demonstrate a reason for believing that a violation of the sections of chapter 42.17 RCW that are enforced by the commission has occurred; and

(c) The name, address, telephone number, and other contact information for the complainant.

**CITES:**

RCW 42.17.370(1)

**COMMENTS:**

The proposed amendments clarify that complaints to the agency shall be in writing, clarifies the PDC's jurisdiction, and provides that the complainant shall provide contact information.

<b>Proposed New Rule</b>
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**\*PROPOSED NEW RULE**

**WAC 390-37-041 Enforcement procedures – Allegations submitted to the Attorney General’s Office and/or prosecuting attorneys.**

(1) When a person has notified the attorney general or prosecuting attorney under RCW 42.17.400(4) that there is reason to believe a violation of the sections of chapter 42.17 RCW enforced by the commission has occurred, the statutory time periods are tolled when the attorney general or prosecutor forwards the complaint to the commission.

(2) After the allegations have been forwarded to the commission, commission staff may:

- (a) Initiate an investigation;
- (b) Submit a report to the commission that may include a recommendation;
- (c) Schedule the matter for an adjudicative proceeding before the commission following investigation; and/or
- (d) Take any other steps consistent with the agency’s authority and resources.

**CITES:**

RCW 42.17.370(1); RCW 42.17.395(3); RCW 42.17.400(4); *State ex rel. EFF v. WEA*

**COMMENTS:**

This proposed new rule would explain the tolling provisions set out in case law. This proposed new rule would also explain current practices and options upon the agency’s receipt of alleged violations of the sections of chapter 42.17 RCW that the commission enforces, when those allegations are presented to the attorney general’s office and/or prosecuting attorney’s office under RCW 42.17.400(4).

<b>WAC 390-37-050</b>
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**\*CURRENT RULE:**

**WAC 390-37-050 Enforcement procedures -- Respondent's notice of complaint.** Within ten days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. The notice shall set forth the nature of the complaint and its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated.

[Statutory Authority: RCW 42.17.370(1). 79-08-046 (Order 79-03), § 390-37-050, filed 7/19/79; Order 81, § 390-37-050, filed 7/22/76.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-050 Enforcement procedures -- Respondent's notice of complaint.** Within ten business days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. The notice shall set forth the nature of the complaint and its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated.

**CITES:**

RCW 42.17.370(1)

**COMMENTS:**

This proposed amendment would clarify the time period for when the commission staff notifies a respondent that a complaint has been filed.

**\*CURRENT RULE:**

**WAC 390-37-060 Enforcement procedures -- Investigation of complaints -- Initiation of hearing.**

(1) Upon receipt of a complaint not obviously unfounded or frivolous, the executive director shall direct an investigation be conducted. If after an initial review of the complaint it is determined that a complete and thorough investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before continuing the investigation.

(2) The executive director shall initiate an enforcement hearing whenever an investigation reveals facts which the executive director has reason to believe are a material violation of chapter 42.17 RCW and do not constitute substantial compliance.

(3) The respondent shall be notified of the date of the hearing no later than ten days before that date pursuant to WAC 10-08-040.

(4) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). If a request is made for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330.

[Statutory Authority: RCW 42.17.370. 93-24-003, § 390-37-060, filed 11/18/93, effective 12/19/93; 91-16-072, § 390-37-060, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-060, filed 2/5/86; 84-12-017 and 84-12-029 (Orders 84-03 and 84-03A), § 390-37-060, filed 5/25/84 and 5/29/84; Order 81, § 390-37-060, filed 7/22/76.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-060 Enforcement procedures -- Investigation of complaints -- Initiation of hearing (adjudicative proceeding).**

(1) Upon receipt of a complaint not obviously unfounded or frivolous, the executive director shall direct an investigation be conducted. If after an initial review of the complaint it is determined that a complete and thorough investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before continuing the investigation.

(2) The executive director shall initiate an enforcement hearing adjudicative proceeding or provide a report to the commission whenever an investigation reveals facts ~~which~~ that the executive director has reason to believe are a material violation of the sections of chapter 42.17 RCW under the commission's jurisdiction, and do not constitute substantial compliance.

(3) The respondent shall be notified of the date of the hearing adjudicative proceeding or other consideration by the commission no later than ten calendar days before that date. ~~pursuant to WAC 10-08-040. The notice shall contain the information required by RCW 34.05.434. The complainant shall also be provided a copy of this notice.~~

(4) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). If a request is made for any such record ~~which~~ that implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330. Certain documents shall be returned to candidates, campaigns, or political



committees as required by RCW 42.17.365 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

**CITES:**

RCW 42.17.395(2), RCW 42.17.310(1)(d), RCW 42.17.370(1), RCW 42.17.365, RCW 34.05.410 *et seq.*

**COMMENTS:**

The proposed amendments would confirm current practices for providing complaints to the commission for consideration, confirm that the complainant shall receive a copy of the notice of the hearing notice, and explain a statutory requirement addressing return of certain documents following an investigation.

**\*CURRENT RULE:**

**WAC 390-37-063 Enforcement procedures -- Demand for information -- Subpoenas. (1)**

During the course of an audit or an investigation, the executive director may issue a subpoena directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The subpoena shall

- (a) Specifically describe the information which is sought, and
- (b) Set forth a reasonable time and place for the production of the information, and
- (c) Notify the person that if the information is not produced, the executive director will apply to the superior court for an appropriate order or other remedy.

The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission may issue a subpoena under RCW 42.17.370(5) to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the commission deems relevant and material.

[Statutory Authority: RCW 42.17.370. 93-24-003, § 390-37-063, filed 11/18/93, effective 12/19/93. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-063, filed 2/5/86; 82-02-007 (Order 81-04), § 390-37-063, filed 12/28/81.]

**SUGGESTED AMENDMENT:**

**WAC 390-37-063 Enforcement procedures -- Demand for information -- Subpoenas. (1)**

During the course of an audit or an investigation, the executive director may issue a subpoena directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The subpoena shall

- (a) Specifically describe the information which is sought, and
- (b) Set forth a reasonable time and place for the production of the information, and
- (c) Notify the person that if the information is not produced, the executive director will apply to the superior court for an appropriate order or other remedy.

The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission may issue a subpoena under RCW 42.17.370(~~5~~) and WAC 390-37-120 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the commission deems relevant and material.

**CITES:**

RCW 42.17.370(1), RCW 42.17.370(6); RCW 34.05.446; WAC 390-37-120

**COMMENTS:**

This proposed amendment corrects a statutory citation and for ease of reference provides a cross-reference to another PDC subpoena rule.

<b>WAC 390-37-070</b>
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**\*CURRENT RULE:**

**WAC 390-37-070 Enforcement procedures -- Complaints dismissible by executive director.**

The executive director, with the concurrence of the chair, at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does not show reason to believe that a material violation of chapter 42.17 RCW has occurred.

[Statutory Authority: RCW 42.17.390. 94-05-010, § 390-37-070, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-070, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-070, filed 5/25/84; Order 81, § 390-37-070, filed 7/22/76.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-070 Enforcement procedures -- Complaints ~~dismissible~~ dismissed by executive director.** The executive director, with the concurrence of the chair, at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does not show reason to believe that a material violation of the sections of chapter 42.17 RCW that are enforced by the commission has occurred and/or shows that the respondent is in substantial compliance with the relevant statutes or rules.

**CITES:**

RCW 42.17.370(1)

**COMMENTS:**

The proposed amendments would confirm the commission's jurisdiction, and confirm current practices with regard to complaints dismissed by the executive director with concurrence of the chair.

**\*CURRENT RULE:**

**WAC 390-37-090 Informal settlement -- Cases resolvable by stipulation.** (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any person whose interest in a matter before the commission may be resolved by settlement shall communicate his or her request to the executive director, setting forth all pertinent facts and the desired remedy. If the executive director requires additional information to resolve the matter informally, the executive director shall promptly provide to the person seeking relief an opportunity to supply such information. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree that some or all of the facts are uncontested, a stipulation of fact shall be prepared for the presentation to the commission.

(c) In the event an early, informal resolution or stipulation of facts is reached, the executive director is responsible for providing a written description of the recommended resolution or stipulation to the person(s) involved.

(2)(a) If settlement of an enforcement hearing (adjudicative proceeding) may be accomplished by informal negotiation, negotiations shall be commenced at the earliest possible time. Settlement shall be concluded by:

(i) Stipulation of facts of the parties; or

(ii) Stipulation of the parties; or

(iii) Withdrawal of the application for an enforcement hearing by the applicant; or

(iv) Withdrawal by the executive director of the action which is the subject matter of the enforcement hearing.

(b) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The stipulation shall be recited on the record at the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, then a hearing shall be held. If the commission requests additional facts be presented, the matter shall be referred to the executive director for further investigation.

[Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-090, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-090, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-090, filed 5/25/84; Order 81, § 390-37-090, filed 7/22/76.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-090 Informal settlement -- Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.** (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate

proceedings under the Administrative Procedure Act unnecessary.

(a) ~~Any person enforcement whose interest in a matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee ("commission staff"), setting forth all pertinent facts and the desired remedy. If the executive director requires additional information to resolve the matter informally, the executive director shall promptly provide to the person seeking relief an opportunity to supply such information. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.~~

(b) ~~When the executive director and respondent agree that some or all of the facts are uncontested, to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the a stipulation of fact shall be prepared for the presentation to the commission.~~

(c) ~~In the event an early, informal resolution or stipulation of facts is reached, the executive director is responsible for providing a written description of the recommended resolution or stipulation to the person(s) involved.~~

(2)(a) ~~If settlement of an enforcement hearing (adjudicative proceeding) may be accomplished by informal negotiation, negotiations shall be commenced at the earliest possible time. Prior to an Settlement shall be concluded by:~~

~~(i) Stipulation of facts of the parties; or~~

~~(ii) Stipulation of the parties; or~~

~~(iii) Withdrawal of the application for an enforcement hearing by the applicant; or~~

~~(iv) Withdrawal by the executive director of the action which is the subject matter of the enforcement hearing.~~

~~(b) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. The stipulation shall be recited on the record at the hearing, although attached or referenced documents may be stated by reference and incorporated as a result. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an hearing adjudicative proceeding shall be scheduled and held. If the commission requests additional facts be presented, the matter shall be referred to the executive director for further investigation.~~

~~(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.~~

~~(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.~~

#### **CITES:**

RCW 42.17.370(1); RCW 34.05.060

#### **COMMENTS:**

The proposed amendments refine the current alternative dispute resolution procedure (stipulations) to streamline them and reflect current practice. These proposed amendments also encourage other creative resolutions without further litigation. These proposed amendments explain that if no objections are raised by the respondent at the time an order is entered following such alternative dispute resolution procedures, objections and appeals are presumed waived, and it is presumed the respondent agrees to the entry of the order.

## WAC 390-37-100

### **\*CURRENT RULE:**

**WAC 390-37-100 Enforcement procedures -- Conduct of hearings.** (1) An enforcement hearing (adjudicative proceeding) shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), shall be followed unless otherwise modified by chapter 390-37 WAC.

(2) An enforcement hearing shall be heard either by the commission or under RCW 34.12.040 or 34.12.050(2), by a duly designated administrative law judge.

(3) Upon the conclusion of an enforcement hearing heard by an administrative law judge, the judge shall prepare and present to the commission findings of fact, conclusions of law, and a proposed decision determinative of the matter. A copy of the findings of fact, conclusions of law and the proposed decision shall be served upon the executive director and the respondent. Both the respondent and the executive director shall be afforded an opportunity to file exceptions and written argument with the commission. The commission shall review the proposed decision at its next regular meeting or at a special meeting called for that purpose. The commission shall consider the whole record or such portions as shall be cited by the parties. Oral argument may be heard at the discretion of the commission.

(4) After either a hearing by the commission or review by the commission of the proposed decision of an administrative law judge the commission may find that:

(a) Respondent did not violate the act, as alleged, and dismiss the case; or

(b) Respondent violated chapter 42.17 RCW, as alleged, and determine the sanction, if any, to be imposed; or

(c) Respondent is in apparent violation of chapter 42.17 RCW, its own remedy is inadequate and enter its order referring the matter to the appropriate law enforcement agency as provided in RCW 42.17.360.

(5) Upon the conclusion of a hearing, the commission

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Shall deliver, either in person or by mail, to each respondent or the respondent's representative a copy of the findings of fact, conclusions of law and decision.

(6) When the commission finds an apparent violation and refers the matter to an enforcement agency, the commission shall give to the respondent written notice of such finding and order of referral.

[Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-100, filed 8/2/91, effective 9/2/91; 90-16-083, § 390-37-100, filed 7/31/90, effective 8/31/90. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-100, filed 2/5/86; 85-15-020 (Order 85-03), § 390-37-100, filed 7/9/85; 84-12-017 (Order 84-03), § 390-37-100, filed 5/25/84; Order 81, § 390-37-100, filed 7/22/76.]

### **SUGGESTED AMENDMENTS:**

**WAC 390-37-100 Enforcement procedures -- Conduct of hearings (adjudicative proceedings).** (1) An enforcement hearing (adjudicative proceeding) shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). C and its supporting regulations (chapter 10-08 WAC), shall be followed unless otherwise modified by chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent

chapter 390-37 WAC and chapter 10-08 differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding enforcement hearing shall be heard either by the commission, except for brief adjudicative proceedings which are conducted by the chair or commission designee, under RCW 34.12.040 or 34.12.050(2), by a duly designated administrative law judge.

~~(3) Upon the conclusion of an enforcement hearing heard by an administrative law judge, the judge shall prepare and present to the commission findings of fact, conclusions of law, and a proposed decision determinative of the matter. A copy of the findings of fact, conclusions of law and the proposed decision shall be served upon the executive director and the respondent. Both the respondent and the executive director shall be afforded an opportunity to file exceptions and written argument with the commission. The commission shall review the proposed decision at its next regular meeting or at a special meeting called for that purpose. The commission shall consider the whole record or such portions as shall be cited by the parties. Oral argument may be heard at the discretion of the commission.~~

The commission shall have the authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Rule on procedural matters, objections, and motions;

(d) Rule on offers of proof and receive relevant evidence;

(e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Take official notice of facts pursuant to RCW 34.05.452(5);

(h) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(i) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(j) Issue an order of default pursuant to RCW 34.05.440;

(k) Take any other action necessary and authorized by any applicable statute or rule; and

(l) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver.

(m) The commission chair or designee may conduct the procedural aspects of the adjudicative proceeding under (a) – (l) above, unless a majority of members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

~~(5) After either an adjudicative proceeding hearing by the commission, or review by the commission of the proposed decision of an administrative law judge the commission may find that:~~

~~(a) Respondent did not violate the act, as alleged, and dismiss the case; or~~

~~(b) Respondent violated chapter 42.17 RCW; as alleged, and determine the sanction, if any, to be imposed; or~~

~~(c) Respondent is in apparent violation of chapter 42.17 RCW, its own remedies are is inadequate and enter its order referring the matter to the appropriate law enforcement agency as provided in RCW 42.17.360 and RCW 42.17.395.~~

~~(6) Upon the conclusion of a an adjudicative proceeding hearing, the commission~~

~~(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case and enter an order and~~

~~(b) Shall serve the respondent deliver, either in person or by mail, to each respondent or the respondent's representative a copy of the findings of fact, conclusions of law and decision and order.~~

(7) The executive director is authorized to sign orders on behalf of the commission.

(8) When the commission finds an apparent violation and refers the matter to an enforcement agency, the commission shall give to the respondent written notice of such finding and order of referral.

**CITES:**

RCW 34.05.461, chapter 10-08 WAC, RCW 42.17.370(1), RCW 42.17.395, RCW 42.17.360

**COMMENTS:**

The proposed amendments remove references to administrative law judges, provide cross references to brief adjudicative proceedings, provide details of adjudicative hearing procedures including the conduct of the hearing, and confirm other practices in those proceedings. The amendments explain that where chapter 390-37 WAC's rules differ from the model rules in chapter 10-08 WAC, chapter 390-37 WAC controls. This is because the agency finds that its adjudicative proceedings rules are better tailored in several respects to the type and volume of cases before the PDC, and to the procedures necessary for a multimember board that meets approximately monthly.



<b>Proposed New Rule</b>
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**\* PROPOSED NEW RULE:**

**WAC 390-37-103 Commission options following receipt of a staff report on alleged violations.** Upon receipt of a staff report concerning alleged violations of those sections of chapter 42.17 RCW that the commission enforces, the commission may:

- (1) Schedule the matter for a hearing (adjudicative proceeding); or,
- (2) Issue an order; or,
- (3) In lieu of holding an enforcement hearing (adjudicative proceeding), or issuing an order, refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW 42.17.360(5) and RCW 42.17.395.

**CITES:**

RCW 42.17.370, RCW 42.17.360(5), RCW 42.17.395

**COMMENTS:**

This proposed new rule explains the statutory options in RCW 42.17.360(5) and RCW 42.17.395 available to the commission upon receipt of a staff report concerning alleged violations of those sections of chapter 42.17 RCW that it enforces. The proposed rule also explains current procedures for when agency staff present a report to the commission concerning alleged violations.

**\*CURRENT RULE:**

**WAC 390-37-105 Prehearing conference -- Rule.** (1) In any proceeding, the chair upon his/her own motion or upon request by one of the parties or their qualified representative, may direct the parties to appear at a specified time and place for a conference to consider:

- (a) Simplification of issues;
  - (b) The necessity of amendments to the hearing notice;
  - (c) The possibility of obtaining stipulations, admissions of facts and of documents;
  - (d) Limitation on the number of witnesses; and
  - (e) Procedural and such other matters as may aid in the disposition of the proceeding.
- (2) Prehearing conferences may be presided over by the chair or his/her designee.
- (3) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.
- (4) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.
- (5) When the chair or his/her designee presides over a prehearing conference, he or she is acting as a quasi-judicial body which relates to a quasi-judicial matter between named parties. Therefore, a prehearing conference is not subject to chapter 42.30 RCW, Open Public Meetings Act.

[Statutory Authority: RCW 42.17.390. 94-05-010, § 390-37-105, filed 2/3/94, effective 3/6/94.  
Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-105, filed 8/2/91, effective 9/2/91.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-105 Prehearing conference -- Rule.** (1) In any prehearing conference prior to an enforcement hearing (adjudicative proceeding), the chair upon his/her own motion or upon request by one of the parties or their qualified representative, may direct the parties to appear at a specified time and place for a conference to consider:

- (a) Identifying and simplifying ~~Identifying and simplification~~ of issues;
  - (b) The necessity of amendments to the hearing notice;
  - (c) The possibility of obtaining stipulations, admissions of facts and of documents;
  - (d) ~~Limitation on~~ Limitation on the number of witnesses; and
  - (e) Procedural and such other matters as may aid in the disposition ~~conduct~~ of the proceeding.
- (2) Prehearing conferences may be presided over by the chair or his/her designee.
- (3) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.
- (4) In a prehearing conference, the presiding officer may hear prehearing motions regarding preliminary matters such as motions in limine, discovery motions, and other similar matters. The presiding officer shall not consider dispositive motions in a prehearing conference and such motions will automatically be scheduled for consideration before the commission.
- (45) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference and the date on which objections to the order are to be filed and served. If no objection to the order is timely filed with the presiding officer ~~within seven days after the date the order is mailed~~, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.
- (5-6) When the chair or his/her designee presides over a prehearing conference, he or she is acting as a quasi-judicial body which relates to a quasi-judicial matter between named parties.

Therefore, a prehearing conference is not subject to chapter 42.30 RCW, Open Public Meetings Act.

**CITES:**

RCW 34.05.431, RCW 34.05.437(1), WAC 10-08-130

**COMMENTS:**

The proposed amendments clarify what the presiding officer can hear and decide in prehearing (pre-adjudicative proceedings) matters, and the objection procedures that would apply.

**\*CURRENT RULE:**

**WAC 390-37-120 Enforcement hearings -- Subpoenas -- Discovery -- Hearings.** (1) The commission or presiding officer may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memorandums, or other records deemed relevant or material and the commission or presiding officer may issue protective orders as a part of an enforcement hearing. The agency or its legal representative may issue subpoenas as may the attorney of the party against whom action is being taken. All subpoenas must be filed with the commission, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The commission, upon motion or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

[Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-120, filed 8/2/91, effective 9/2/91.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-120 Enforcement hearings (adjudicative proceedings)-- Subpoenas -- Discovery -- Hearings.** (1) The commission, or presiding officer, may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memorandums, or other records deemed relevant or material and the commission or presiding officer may issue protective orders as a part of an enforcement hearing. The agency or its legal representative may issue subpoenas as may the attorney of the party against whom action is being taken. Upon request of the commission or presiding officer, All subpoenas must be filed with the commission, together with proof of proper service, ~~at least five days prior to the date of the hearing for which they are issued.~~ Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120(4). The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission, or presiding officer upon motion or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

**CITES:**

RCW 34.05.446, WAC 10-08-120(4)

**COMMENTS:**

The proposed amendments clarify subpoena procedures for adjudicative proceedings.

**\*CURRENT RULE:**

**WAC 390-37-130 Enforcement hearings -- Depositions and interrogatories -- Right to take.**

Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The deposition of a commissioner, the executive director, or assistant director, may only be taken upon application to the commission, for good cause shown, and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas.

[Statutory Authority: RCW 42.17.370, 91-16-072, § 390-37-130, filed 8/2/91, effective 9/2/91.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-130 Enforcement hearings (adjudicative proceedings)-- Depositions and interrogatories -- Right to take.** Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The deposition of a commissioner, the executive director, or assistant director, may only be taken upon application to the commission, for good cause shown, and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas.

**CITES:**

RCW 42.17.370, RCW 34.05.010, RCW 34.05.446

**COMMENTS:**

This proposed amendment refers to the correct statutory term for hearings.

**\*CURRENT RULE:**

**WAC 390-37-132 Enforcement hearings -- Depositions and interrogatories -- Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than seven days in writing to the commission and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the commission or its hearing officer may, for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-132, filed 8/2/91, effective 9/2/91.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-132 Enforcement hearings (adjudicative proceedings) - Depositions and interrogatories -- Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than seven calendar days in writing to the commission and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the commission or its hearing officer may, for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

**CITES:**

RCW 42.17.370(1); RCW 34.05.010, RCW 34.05.446

**COMMENTS:**

This proposed amendment would correct the hearing term, and provides the time period for deposition notices.

**\*CURRENT RULE:**

**WAC 390-37-134 Depositions and interrogatories in enforcement hearings -- Protection of parties and deponents.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the commission or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the commission or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-134, filed 8/2/91, effective 9/2/91.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-134 Depositions and interrogatories in enforcement hearings (adjudicative proceedings)-- Protection of parties and deponents.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the commission or ~~its designated hearing officer~~ the presiding officer in a prehearing conference may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the commission or ~~its designated hearing officer~~ the presiding officer in a prehearing conference may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

**CITES:**

RCW 42.17.310(1), RCW 34.05.446

**COMMENTS:**

This proposed amendment would correct the hearing term to the statutory term, and correct the reference from hearing officer (administrative law judge) to presiding officer.

**\*CURRENT RULE:**

**WAC 390-37-136 Production of documents and use at hearing.** (1) Upon request by either the agency or its legal representative, or the party against whom the enforcement action is being taken or his/her representative, copies of all materials to be presented at the enforcement hearing shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When exhibits of a documentary character are to be offered into evidence at the hearing, the party offering the exhibit shall provide a minimum of seven copies, one for opposing party, one for each member of the commission, and one for the commission's legal advisor.

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the hearing for the purpose of exchanging copies of exhibits to be introduced.

[Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-136, filed 8/2/91, effective 9/2/91.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-136 Production of documents and use at hearing (adjudicative proceedings).**

(1) Upon request by either the agency or its legal representative, or the party against whom the enforcement action is being taken or his/her representative, copies of all materials to be presented at the ~~enforcement hearing~~ adjudicative proceeding shall be provided to the requester within seven calendar days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When exhibits of a documentary character are to be offered into evidence at the ~~hearing~~ adjudicative proceeding, the party offering the exhibit shall provide a minimum of ~~seven~~ ten copies, ~~one for opposing party, one for each member of the commission, and one for the commission's legal advisor.~~

(3) If documentary evidence has not been exchanged prior to the hearing under subsection (1), the parties shall arrive at the hearing location in sufficient time before the time scheduled for the ~~hearing~~ adjudicative proceeding for the purpose of exchanging copies of exhibits to be introduced.

**CITES:**

RCW 42.17.310(1), RCW 34.05.446

**COMMENTS:**

The proposed amendments correct the statutory hearing term, clarify the exchange of exhibits for adjudicative proceedings, and the number of copies needed.



**\*CURRENT RULE:**

**WAC 390-37-140 Brief enforcement hearings -- Authority.** (1) The commission may provide a brief enforcement hearing for violations of provisions in chapter 42.17 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations. Typical matters to be heard in a brief enforcement hearing include but are not limited to the following:

- (a) Failure to file or late filing of required reports,
- (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying,
- (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal,
- (d) Infractions of political advertising law regarding sponsor identification or political party identification.

(2) A brief enforcement hearing is a brief adjudicative proceeding as set forth in RCW 34.05.482 through 34.05.494 and shall be in accordance with those statutes.

[Statutory Authority: RCW 42.17.370. 93-15-004, § 390-37-140, filed 7/7/93, effective 8/7/93; 91-16-072, § 390-37-140, filed 8/2/91, effective 9/2/91.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings) -- Authority.** (1)

The commission may provide a brief ~~enforcement hearing~~ adjudicative proceeding for violations of ~~provisions in the sections of~~ chapter 42.17 RCW ~~that it enforces in~~ which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations. Typical matters to be heard in a brief ~~enforcement hearing~~ adjudicative proceedings include but are not limited to the following:

- (a) Failure to file or late filing of required reports,
- (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying,
- (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal,
- (d) Infractions of political advertising law regarding sponsor identification or political party identification.

(2) The commission may utilize a penalty schedule for brief adjudicative proceedings.

(3) A brief enforcement hearing is a Brief adjudicative proceedings as are set forth in RCW 34.05.482 through 34.05.494 and shall be in accordance with those statutes.

**CITES:**

RCW 42.17.310(1), RCW 34.05.482 - .494

**COMMENTS:**

The proposed amendments correct the statutory term for hearings, clarify the commission's jurisdiction, and provide reference to the penalty schedule developed for brief adjudicative proceedings.

## WAC 390-37-142

### **\*CURRENT RULE:**

**WAC 390-37-142 Brief enforcement hearing -- Procedure.** (1) A brief enforcement hearing may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140 is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:

- (a) Alleged violation;
- (b) The maximum amount of the penalty which can be imposed at the hearing and the amount of any proposed fine; and
- (c) Person's right to respond, within ten days, either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than \$500, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an enforcement hearing by the full commission.

(4) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed, and their right to request review by the commission at the next scheduled commission meeting.

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

[Statutory Authority: RCW 42.17.390. 94-05-010, § 390-37-142, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370. 93-15-004, § 390-37-142, filed 7/7/93, effective 8/7/93; 91-16-072, § 390-37-142, filed 8/2/91, effective 9/2/91.]

### **SUGGESTED AMENDMENTS:**

**WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding)-- Procedure.** (1) A ~~brief enforcement hearing~~ adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140 is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:

- (a) Alleged violation;
- (b) The maximum amount of the penalty ~~which that~~ can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and
- (c) Person's right to respond, ~~within ten days,~~ either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than \$500, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an ~~enforcement hearing~~ adjudicative proceeding by the full commission.

(4) At the time any unfavorable action is taken, within ten business days the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed, and their right to request review by the commission ~~at the next scheduled commission meeting.~~ The executive director is authorized to sign the decision on behalf of the presiding officer.

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

### **CITES:**

RCW 42.17.310(1), RCW 34.05.482 - .494

**COMMENTS:**

The proposed amendments clarify when initial orders are provided following a brief adjudicative proceeding, provide references to penalty schedules, and state that the executive director may sign orders on behalf of the presiding officer.

**\*CURRENT RULE:**

**WAC 390-37-144 Brief enforcement hearing -- Administrative review procedures.** (1) The commission shall conduct a review of the initial order upon the written or oral request of a party if the commission receives the request within twenty-one days after the service of the initial order.

(2) If the parties have not requested review, the commission may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later.

[Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-144, filed 8/2/91, effective 9/2/91.]

**SUGGESTED AMENDMENTS:**

**WAC 390-37-144 Brief enforcement hearing adjudicative proceeding-- Administrative review procedures.** (1) The commission shall conduct a review of the initial order upon the written or oral request of a party if the commission receives the request within twenty-one business days after the service of the initial order. "Service" is defined as the date the order was deposited in the U. S. mail per RCW 34.05.010(19), or personally served. The party seeking review shall state the reason for the review, and identify what alleged errors are contained in the initial order.

(2) If the parties have not requested review, the commission may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that reconsideration and judicial review is are available. The order on review shall be entered within twenty business days after the date of the initial order or of the request for review, whichever is later.

(4) If the commission is not scheduled to meet within twenty business days after the date of the initial order or request for review and therefore cannot dispose of the request within that time period, the request is:

(a) Deemed denied under RCW 34.05.491(5) and the initial order becomes final;

(b) Considered a request for reconsideration under WAC 390-37-150; and

(c) Will be scheduled for consideration and disposition at the next commission meeting.

**CITES:**

RCW 42.17.310(1), RCW 34.05.482 - .494

**COMMENTS:**

The proposed amendments cross-reference the definition of service, clarify the appeal period for brief adjudicative proceedings, state that the party seeking review is to identify the reasons review is requested, and explain that a request for review will be considered as a request for reconsideration if the statutory review periods cannot be achieved due to the commission's meeting schedule. The PDC is also enabling easier administrative review, through treating requests for review that are received but cannot be heard because of the commission's meeting

scheduled, as requests for reconsideration. The PDC finds that these procedures are reasonable under the specific circumstances, enable the commission to better perform its statutory duties that affect very small participants in the political process as well as very large ones, and enable a multimember citizen commission that meets approximately monthly to receive adequate information to permit review.

## WAC 390-37-150

### **\*CURRENT RULE:**

**WAC 390-37-150 Reconsideration and review of decisions.** (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the written request of the person aggrieved thereby or (b) the motion or written request of a commissioner who voted on the prevailing side when that decision was made.

(3) Such a request for reconsideration shall be served at the office of the public disclosure commission, or motion made, no later than ten days after service of the decision of which reconsideration is sought.

(4) A request or motion for reconsideration shall specify the grounds therefor.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the commission has acted on the reconsideration.

(7) The commission shall act on the reconsideration, at the next meeting at which it practicably may do so, by: (a) Deciding whether to reconsider its decision, and (b) if it decides to do so, either affirming or amending its decision: Provided, That before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner as, required for the original decision.

[Statutory Authority: RCW 42.17.370. 91-16-072, § 390-37-150, filed 8/2/91, effective 9/2/91.

Statutory Authority: RCW 42.17.370(1). 79-08-046 (Order 79-03), § 390-37-150, filed 7/19/79.]

### **SUGGESTED AMENDMENTS:**

**WAC 390-37-150 Reconsideration and judicial review of decisions.** (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the written request of the ~~person aggrieved~~ respondent thereby or (b) the motion or written request of a commissioner who voted on the prevailing side when that decision was made.

(3) Such a request for reconsideration shall be filed ~~served~~ at the office of the public disclosure commission, or motion made, no later than ~~ten~~ twenty-one business days after service of the decision of which reconsideration is sought. Copies of the request or motion shall be served on all parties of record at the time the request for reconsideration or motion is filed.

(4) A request or motion for reconsideration shall specify the grounds therefor. Grounds for reconsideration shall be limited to:

(a) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence. If errors of fact are alleged, the requester must identify the specific evidence in the prior proceeding on which the requester is relying upon. If errors of law are alleged, the requester must identify the specific citation; or

(b) Significant typographical or ministerial errors in the order.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of

which reconsideration is sought shall be stayed and the decision shall not be final until the commission has acted on the reconsideration.

(7) The commission is deemed to have denied request for reconsideration or motion if, within twenty business days from the date the request or motion is filed, the commission does not either (a) dispose of the request or motion, or (b) serve the parties with written notice specifying the date it will act upon the request or motion.

(8) The commission shall act on the reconsideration request or motion, at the next meeting at which it practicably may do so, by:

(a) Deciding whether to reconsider its decision, and

(b) if it decides to do so, either

(i) affirming or amending its decision or

(ii) withdrawing or modifying the final order, or

(iii) setting the matter for further hearing;

Provided, That before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner as, required for the original decision.

#### **CITES:**

RCW 42.17.310(1); RCW 34.05.470; RCW 34.05.080(3) & (7).

#### **COMMENTS:**

The proposed amendments clarify the procedures for seeking reconsideration, and provide criteria for seeking reconsideration. The ten-day time period in RCW 34.05.470 is being modified to a twenty-one business day time period as authorized by RCW 34.05.080(3) & (7). The agency finds that these times periods are reasonable under the specific circumstances, enable the commission to better perform its statutory duties that affect very small participants in the political process as well as very large ones, and enable a multimember citizen commission that meets only occasionally to receive adequate information to permit appropriate reconsideration.

<b>Proposed New Rules</b>
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**\*PROPOSED NEW RULES:**

**WAC \_ .Penalty Schedule.**

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**CITES:**

RCW 42.17.370(1)

**COMMENTS:**

This is a placeholder for the penalty schedules for brief adjudicative proceedings for enforcement cases regarding F-1's, Candidate F-1's, C-1's; L-2's; L-3's; and Electronic Filing. The proposal is to have a new rule for each schedule.